



Comptroller General  
of the United States  
Washington, D.C. 20548

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Maeder

## Decision

**Matter of:** Firetech Automatic Sprinklers, Inc.

**File:** B-248452

**Date:** August 12, 1992

A.W. Pharris for the protester.  
James S. Crumpton for Crumpton Sprinkler Company, an interested party.  
Thomas L. Read, Esq., U.S. Department of Justice, for the agency.  
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Amendments to an invitation for bids (IFB) are material where they provide the government's exact specifications for, among other things, the size and material of pipe to be used in the installation of a fire sprinkler system and the size of a site section to be fitted with the sprinkler system, which have a significant impact on the contractor's obligations under the IFB.

2. Agency properly rejected bid as nonresponsive where bidder failed to acknowledge material amendments because, absent such acknowledgment, the bidder is not obligated to furnish the solicited sprinkler system in accordance with the specifications in the amendments.

### DECISION

Firetech Automatic Sprinklers, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 146-6176, issued by the Federal Bureau of Prisons, U.S. Department of Justice for the installation of a fire sprinkler system at the Federal Correctional Institution, La Tuna, New Mexico. Firetech's bid was rejected as nonresponsive because it failed to acknowledge the amendments to the IFB.

We deny the protest.

The agency issued the IFB on February 13, 1992, with bid opening scheduled for March 11. The IFB was amended four times prior to bid opening. The protest concerns amendment A-002-2 which specified, among other things, that all

control valves on the 4" risers will be butterfly valves with temper switches, the previously noted 2" risers to fire hose cabinets will be 1-1/2" risers, and the 1-1/2" copper pipes to fire hose cabinets will be 1-1/2" steel pipes; and, amendment A-004-2 which, among other things, corrected the scale on the drawing for the tunnel layout and 8" water line from 1/8" = 1' to 1" = 25', required that all risers terminate 3' above the first floor, that the tie-in to the existing 8" main line will be a dry barrel, that all pipes penetrating a floor or wall will be sleeved, and that each sleeve will be sealed with concrete between floor/wall and sleeve and have a fire-proof sealer between sleeve and pipe.<sup>1</sup>

The agency received four bids in response to the IFB. Firetech was the apparent low bidder at \$34,765; however, because Firetech's bid failed to acknowledge the amendments, by letter dated April 10, the Bureau of Prisons rejected the bid as nonresponsive. Firetech filed this protest with our Office on April 23.

Firetech asserts that none of the amendments are material; therefore, the agency is required to waive its failure to acknowledge the amendments as a minor informality. See Federal Acquisition Regulation (FAR) § 14.405. The protester contends that the amendments involve "only a matter of form and not of substance" and do not materially affect the solicitation as to quantity, quality, delivery, or price. For example, Firetech argues that the original specification for copper pipe, which amendment A-002-2 changed to replacement with steel pipe, will "result in a negligible downward cost effect" for the contractor. Firetech also argues that the requirements of amendment A-004-2 for sleeve and fireproof caulking were already called for by a general sealant requirement under the original scope of work paragraph.

Moreover, Firetech suggests that it was not required to formally acknowledge the amendments, because it is clear that Firetech considered the contents of the amendments since its personnel attended the pre-bid conference and site visit and submitted the questions that resulted in the issuance of the amendments in question. For example,

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<sup>1</sup>Amendments A-001-2 and A-003-2 merely extended the bid opening date.

Firetech contends that its "site inspection revealed that the piping indicated as 2" risers supplying the fire cabinets was 1-1/2", not 2", as shown on the plans."<sup>2</sup>

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive, since absent such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Recreonics Corp., B-246339, Mar. 2, 1992, 92-1 CPD ¶ 249; Head Inc., 68 Comp. Gen. 198 (1989), 89-1 CPD ¶ 82, aff'd, Head Inc.--Recon., B-233066.2, May 16, 1989, 89-1 CPD ¶ 461. Even where an amendment may not have a clear effect on price, quantity, or quality, it still is considered material where it changes the legal relationship between the parties, for example, if the amendment increases or changes the contractor's obligation or responsibilities. Universal Parking Corp., 69 Comp. Gen. 31 (1989), 89-2 CPD ¶ 367. The materiality of an amendment which imposes new legal obligations on the contractor is not diminished by the fact that the amendment may have little or no effect on the bid price or the work to be performed. Id.

Amendments Nos. A-002-2 and A-004-2 substantially changed the solicitation because they provide the government's exact specifications for, among other things, the size and material of pipe and the size of risers to the fire hose cabinets, the type of control valves required on the 2" risers, the termination point for all risers above the first floor, the tie-in of the risers to the existing 8" main line, the pipe sleeves for all pipes penetrating a floor or wall, and the size of a site section to be fitted.

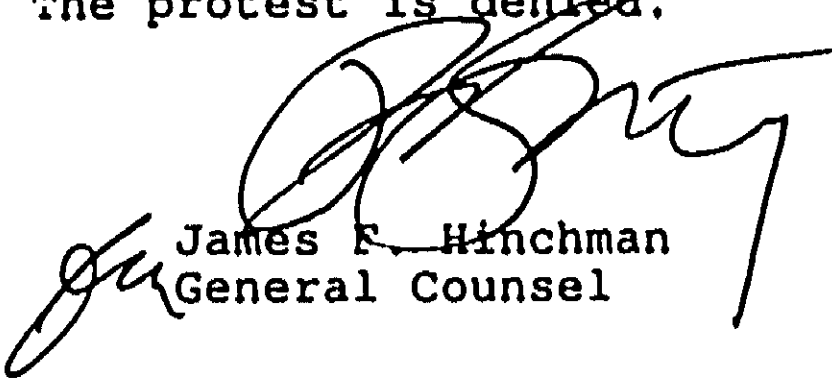
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<sup>2</sup>In its comments on the agency report filed with our Office on June 11, Firetech for the first time alleged that none of the other bidders met the IFB requirements. With respect to the proposed awardee, Firetech asserts that it did not attend the mandatory pre-bid site inspection, and expressed its bid bond only as a percentage of its bid price without providing a specific dollar amount. The solicitation specifically stated that the bid bond "may be expressed in terms of a percentage of the bid price or may be expressed in dollars and cents," and FAR § 28.101-2 allows bidders to express the bid bond amount as a percentage of the bid price. Further, a bidder's failure to conduct a pre-bid site inspection, even when one is required by the solicitation, is not a basis for rejecting an otherwise responsive bid since that failure does not limit the obligation undertaken by the bidder by its submission of an unqualified bid. I.M.I., Inc., B-233863, Jan. 11, 1989, 89-1 CPD ¶ 30. Thus, Firetech's allegations provide no basis to question the responsiveness of the awardee's bid.

The effect of these provisions was to place additional obligations on the bidder, as well as to clarify installation features. Thus, the amendments were material because they imposed obligations and responsibilities on the bidder which were different from those imposed under the solicitation as issued. Absent an acknowledgment of these amendments, Firetech did not obligate itself to furnish the material or install the fire sprinkler system as required under the amendments. Accordingly, the agency properly rejected Firetech's bid as nonresponsive.

Firetech's assertion that, because it attended the pre-bid site visit and submitted the questions on which the amendments are based, it need not formally acknowledge the amendments, is without merit. Even if Firetech intended to base its bid on the specifications in the amendments, Firetech has not specifically bound itself to the specifications in these amendments and, without a written acknowledgment, they are not legally enforceable.

The protest is denied.



James F. Hinchman  
General Counsel